

## CEE Bankwatch Network comments on ADB Safeguard Policy Review

The ADB's Safeguard Policy Statement (SPS) review is vital for the ADB. The new SPS ensures that private and public sector projects and programmes **'are committed to achieving a prosperous, inclusive, resilient, and sustainable Asia & the Pacific** while sustaining its efforts to eradicate extreme poverty'.

CEE Bankwatch Network has experience with ADB funded projects in western Asia and Central Asia. Our experience confirms that the ADB struggles to 'address the development challenges of a new magnitude (e.g., extreme climate events or pandemics)', and it has issues with 'efficiency: ensuring value for money in a context of constrained resources' while failing in 'Accountability'.

The reform of the Bank's Safeguard Policy Statement (2009) could be the step forward to achieve that needed reform to deliver the above commitments. The ADB's evaluation department study and the analytical studies produced by Bank management stress the importance of having a robust, integrated, and well-designed safeguard policy framework. Therefore, hopefully, the new ADB SPS will not simply align with more 'advanced' institutions' safeguard policies and standards. Without diluting already existing requirements, the new policy should strengthen and raise the bar for protecting human rights, the environment, biodiversity, cultural heritage, etc.

It's crucial that the new SPS:

- does not dilute the ADB's responsibility during the development, approval and implementation of the projects and programmes;
- safeguards a 'do no harm' approach beyond the mitigation and offsetting of adverse impacts concerning human rights, environmental and social risks;
- concentrates on programme and project outcomes and impacts;
- ensures proper risk assessment, enhances transparency, and includes an information disclosure mechanism and stakeholder engagement.

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## Streamlining the Human Rights Protection

The new SPS should align with International Environmental Law and UN Principles on Business and Human Rights. The ADB policy architecture study assesses the deficiency of current ADB policy regarding the respect and protection of Human Rights. It is shortly described in [Annex II](#): “at the project level, ADB's SPS addresses human rights only in the context of indigenous peoples, like WB and AIIB. ADB's Social Protection Strategy requires adherence to core labour standards. In relevant projects, this requirement is covenanted in the loan agreements. However, IFC, EBRD, and IDB's safeguards frameworks have more explicit commitments to align with human rights frameworks. Furthermore, EBRD and IDB require borrowers to avoid infringement of human rights and to address risks to human rights in projects. The gap is clear because human rights are mentioned only twice in the current SPS, and no binding requirements are associated. “

However, we have not seen that Bank put any additional effort to address the safeguard policy statement above deficiency or set the regional consultations to reiterate HR inclusion in future policy.

The policy architecture study also notes that in comparison with the frameworks of other MFIs, the SPS has a range of differences or gaps including "(i) affirmation of alignment with human rights frameworks; (ii) coverage of social risks and impacts, including nondiscrimination and equal opportunity for persons with disabilities; (iii) identifying, reporting and responding to gender-based violence (GBV) and sexual exploitation, abuse and harassment (SEAH) risks at the project level; (iv) commitment to managing the risk of retaliation against stakeholders; (v) integration of climate change and disaster risks at the project level, and lower thresholds for GHG estimation; (vi) addressing labour and working conditions; (vii) identifying and managing risks to intangible cultural heritage; (viii) identifying and managing risks associated with the use of security personnel."

The other MDBs human rights strategies are also problematic. Bank cited MDBs, including World Bank and EBRD, that need to update their safeguard policies to accommodate human rights and encourage (such as material incentives, persuasion, and long-term acculturation) borrowers to adhere to safeguard policies and human rights in planning and implementing development projects. The introduction of social safeguards (involuntary resettlement, protection of Indigenous people, adherence to core labour standards) is usually highly prized. But the HR impacts assessment should not be restricted to social impacts. The issues such as freedom of speech, stakeholders' engagement, public participation practices, risks of retaliation, etc., should also be assessed.

The central issue is the binding human rights standards and whether the MDBs ensure the best practices under international HR law. The existing safeguard policies of most of the "advance" MFIs is still not enough to switch focus from harm mitigation (physical or economic resettlement, loss of ancestral heritages, pollution prevention, etc.) towards no harm objectives. E.g. World Bank ESF supports the realisation of HR listed in the Universal Declaration of Human Rights and Member countries to achieve their HR commitments progressively. However, the reference to HR is non-binding. The EBRD more progressed in reaffirming their respect to Human rights, addressing issues such as gender equality labour, conducting Human rights due diligence as part of project review, assessing HR risks, etc.

To ensure the streamlining of the Human rights protection, the Bank should ensure that the new SPS includes three essential elements of the human Rights Framework:

1. Policy commitments that would describe: 1) how the ADB will safeguard and promote human rights; 2) how it will identify, prevent and ensure no harm for human rights while mitigating environmental and social risks and impacts through project appraisal (due diligence) process; 3) What are roles and responsibilities of the promoters' and the Bank.
2. The Strategy for Human Rights protection, that would integrate different policies as protection of Human, Environmental and Land rights defenders, gender and minority rights, promotion of human rights-based approach among stakeholders, clients, borrowers and partners, how it will identify specific human rights risks, prevent and mitigate it at all stages of the project cycle, etc.
3. Binding Human rights due to the project and program's diligence procedure. Human rights project appraisal that would be consist of 1) ex-ante screening and Human Rights Risk Assessment (HRRRA) conducted by the Bank to decide about the need of HRIA 2) participatory and public Human Rights Impact Assessment (HRIA) to be required from the client when risks are identified during the HRRRA and when an ESIA 3) continuous and progressive monitoring and established a well-functioned grievance mechanism.

## Addressing Human Rights violation

In the 2018 meeting ADB, among other MFIs, reconfirmed its commitments to advance standards to prevent sexual harassment, abuse and exploitation through [seven principles](#).

Having that in mind, it is vital that SPS policy reiterates those seven principles fully and integrates them into Human Rights strategy; It should also be stressed that principle 4 "Principle 4: Provide protection for those affected, as well as whistleblowers and/or witnesses within their institutions, and to take appropriate measures against any form of retaliation.", is not sufficiently reflected in the ADB policies. The definition of retaliation has differed in "whistleblowers and witness protection "[administrative order and in "Guidelines for the protection of Key stakeholders during the Accountability mechanisms process"](#)". The later document corresponds to the IAMs reprisals toolkit, but it is only applicable for those who submit complaints. The administrative act also does not fully cover all cases of retaliation of the project stakeholders. In addition, if the retaliation comes from any party other than ADB staff, the Bank may turn to the national government for further support. In some countries of ADB operation, it's pretty usual that the government, through law enforcement institutions or others, [directly or indirectly retaliate against people who oppose the governments or private sector projects/programmes](#). There were numerous reports with regard to the ADB projects when the local communities and leaders, civil society organisation representatives were intimidated or received threats in relation to ADB developed projects. The threats and intimidation increase in cases where communities witness a violation of land rights and right to a safe environment, involuntary resettlement, corruption etc.

Therefore, the ADB under the Human Rights Strategy must:

1. Announce Zero tolerance towards reprisals and retaliation that either relate to or may impact ADB supported activities
2. Develop detailed mandatory procedures for the assessment and prevention of retaliation and respond to it.

3. Publicly denounce the attacks and retaliation cases on HRD, media, and affected communities and report to the public on the action taken, including financial leverage, assisting communities, etc.
4. Requirement for the ADB to develop and follow a mandatory human rights due diligence policy that includes a mechanism for remedy for harm done.

## Addressing the risks and challenges of the ESF model

The policy architecture paper prepared by the ADB underlines that the World Bank and EBRD models are preferable for future policy to ensure environmental protection. However, there are many risks and challenges of the ESF model that will dilute the policy and its implementation in practice.

The OHCHR noted that ADB plans to move in line with ‘the recent tendency among MDBs to shift from ex-ante compliance to more flexible and aspirational environmental and social action plans, framework approaches’. The proposed ‘adaptive risk management’ could raise numerous problems, and the OHCHR recommends ‘ADB ensure that (necessary) investments in adaptive risk management do not displace priority for ensuring ex-ante compliance with the Bank's safeguards, particularly for higher risk project’.

The IED evaluation report stresses the number of problems with the current SPS, including –the fact that it permits the implementation of ring-fencing or salami tactic projects which artificially decrease the environmental, social, and human rights impacts of the project, or projects that disregard human rights or violate of environmental standards with claims that the economic outputs of the projects, such as increased employment or poverty alleviation, outweigh negative environmental impacts.

Therefore, an adaptive risk management system poses a threat that would not work without strict compliance requirements and a robust monitoring and oversight system would not work. Thus, the Bank under its new SPS should commit:

1. to use a country safeguard system to address the risks and impacts of the project only in case of the functional equivalency with SPS.
2. The borrower's functional equivalence and client environmental and social management systems are in line with International Human Rights and environmental law.
3. Ex-ante application of new SPS and safeguards to all relevant high-risk operations;
4. Establishment of proper independent monitoring and supervision and accountability framework safeguards in case of any high-risk projects.

The Bank should scale up efforts to strengthen country safeguard systems and promote harmonisation of its safeguard approaches and practices consistent with good international practice. The projects and programmes should comply with national legislation and the additional safeguard standards of ADB. As a development bank, the ADB should first of all set social-environmental additionality, promote the best international practices and lead governments towards improving national legislation. The Bank should ensure that projects/programmes with numerous components funded with the support of the different donors, including the state budget, are implemented under the best international standards, and no double standards appear within the same project/programme. In accordance with ADB's poverty reduction

mandate, the SPS should ensure that projects are addressing needs and challenges poor and other vulnerable affected people, during the project planning, execution and monitoring.

## Project Risk Assessment, avoiding harmful impacts and remedy

Project categorisation is again a challenge for the ADB's existing SPS, as well as within the World Bank and EBRD ESF systems.<sup>1</sup> Therefore, it is essential to have a clear and precise categorisation of the project risks. The ADB existing categorisation system has four risk levels in Environment, Involuntary Resettlement, and Indigenous People's area.

The categorisation should ensure that the Bank will assess, mitigate and remedy both environmental and social risks, and later one would include social risks as threats to human security, discrimination, involuntary loss of land and restrictions on land use, limited access to land, tangible and intangible cultural heritage, indigenous peoples, gender, etc.

In terms of the risk mitigation hierarchy, the new SPS should commit that it would first and foremost avoid adverse impacts both for the environment as well as people. The offsetting of Human Rights or Biodiversity impacts is unacceptable, which leads towards rethinking of whole feasibility concept as well as mitigation hierarchy, where the projects/programmes designed to minimise or reduce and remedy adverse effects on people and the environment, excluding the Human rights offsetting<sup>2</sup> and biodiversity offsetting<sup>3</sup>.

The explicit recognition of the 'do no harm' principle within the revised ADB safeguards could set an important marker for DFI sustainability frameworks globally. Where residual impacts remain, Borrowers would compensate affected communities or offset adverse effects.

Within this frame, it's important to address the issue of financial intermediaries. The ADB SPS requires that A categories FI projects be approved by ADB management. The clause should be maintained and strengthened in the new SPS, stating explicitly that Bank management is responsible for due diligence and monitoring of SPS implementation. That's especially important in light of the findings of the Evaluation department (2020) that there was a lack of monitoring and supervision with the implementation of the A categories of FI projects.

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<sup>1</sup> E.g. In case of EBRD urban projects are considered as lower risk projects and classified as B category, as it aligns with EU EIA directive where the decisive factor is the environmental impact, not the social impact. On another side, World Bank established the Environmental and Social Standard 1 and classification wise it states that "In determining the appropriate risk classification, the Bank will take into account relevant issues, such as the type, location, sensitivity, and scale of the project; the nature and magnitude of the potential environmental and social risks and impacts; and the capacity and commitment of the Borrower (including any other entity responsible for the implementation of the project) to manage the environmental and social risks and impacts in a manner consistent with the ESS"

<sup>2</sup> Under international law, as recognized in the Equator Principles and EIB safeguards there is no such thing as a "human rights off-set." However no DFI safeguard policy yet recognizes, explicitly, that there should be an effective remedy for all adverse human rights impacts associated with a project, irrespective of whether it is covered by safeguard policies. In our view, explicit recognition of this principle within the revised ADB safeguards could set an important marker for DFI sustainability frameworks globally., Office of the United Nations High Commissioner for Human Rights Memorandum Comments on the Review and Update of the ADB Safeguard Policy Statement 29 April 2021

<sup>3</sup> Please check below part, Biodiversity protection

## Mainstreaming Transparency and stakeholder engagement

The ADB SPS policy should set progressive principles and benchmarks for transparency and stakeholder engagement.

The new policy should ensure that it respects the rights of access to information<sup>4</sup> and right to public participation in line with best international standards, it should ensure the early (when all options are still possible) and continuous meaningful consultation with stakeholders, including affected communities, providing effective project grievance mechanisms and remedies.

The recognition of Free Prior and Informed consent (FPIC) standards for all impacted communities will ensure the higher protection of local communities depending on land for their survival. IFAD already put FPIC for local communities as an operational principle based on voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. [UN-REDD](#) recognizes the fact that ‘REDD activities may impact forest-dependent communities, often similarly as indigenous peoples, and that the circumstances of specific forest-dependent communities may rise to a threshold such that it should be seen as a requirement of States to secure FPIC when an activity may affect the communities’ rights and interests’.

The Forest Stewardship Council 2021 guidelines also stress the need for the FPIC for indigenous and local communities, and it recommends that [some industrial guidelines](#) also start to reflect the requirement of FPIC for local communities, as it comes to be out the major step for sustainable forestry. [Land scarcity](#) becomes the reality of the 21<sup>st</sup> century, accompanied by climate change and food insecurity; therefore it is important to ensure the introduction of FPIC, which FAO [calls ‘an indigenous peoples’ right and good practice for local communities’](#), and these communities’ access to participation in decision making throughout the project cycle as right holders. The negligence towards Indigenous peoples, tribal and ethnic minorities, and vulnerable groups is more than common in the ADB’s countries of operation. Therefore, adoption of the concept of Free Prior Informed Consent to ensure these groups’ meaningful and robust public participation is crucial, both for the improvement of project quality and efficiency. Therefore, adoption of the Free Prior Informed Consent concept to ensure meaningful and robust public participation is crucial, both for the improvement of project quality and efficiency, as well for decreasing land-related conflicts.

The FPIC process should be designed and implemented in accordance with customary law and traditions of IPs and local communities, in a culturally appropriate manner. FPIC should be required when projects may have a negative impact on people’s livelihood and land, territories and resources, tangible and/or intangible cultural heritage.

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<sup>4</sup> as a recognized tool in global and regional human rights instruments, Principle 10 environmental rights to information, SDG 16, target 10,184 many constitutional provisions, and global initiatives such as the Open Government Partnership.

## Information Disclosure

The Bank's information disclosure policy standards and practice should be enhanced towards the private sector projects, including Financial Intermediaries. The Bank should ensure the earliest involvement of stakeholders in decision-making when all options are still possible. The Bank's SPS should require that projects are being subject to early public consultations, when all options are still possible, before development consents are granted by the relevant authorities. In addition, information disclosure regarding the proposed loans and their Social, Environmental and Human rights impacts should be made within a time-bound frame (120 days for A category projects and 60 days for B category projects to allow civil society for a meaningful engagement with the ADB.

The ADB public and private project implementation practice show that often communities don't have the information about the projects handled by the Bank. The Bank posts information mainly in English on its website. For local CSOs and communities from western and Central Asia, that represents a serious issue. The Translation guidelines (2019) sets that country strategies, project data sheets, safeguard documents and other relevant documentation should be translated into national and even local languages. However, our experience shows that this almost never happens and such translations are almost never available on the Bank's website.

The proper implementation of the safeguard policies requires:

1. Timeframes for information disclosure should be clear and binding and aligned more closely with an international best practice including, for Category A projects, disclosure of draft EIA and other safeguard documentation 60 days (for non-sovereign operations) and 120 days (for sovereign operations) prior to Board approval. Information about high-risk Financial Intermediary projects should be available 60 days before
2. The project documents (project summary, draft ESIA, SMPS etc.) for category A and B projects should be also available on national languages on Bank's website
3. Promoters should be required to provide evidences that information disclosure and stakeholders engagement had taken place at an early stage of project development, when all options had still been possible and before any development consent was granted.

## Mainstreaming land rights and avoiding involuntary resettlement

The ADB should translate principles underlined in FAO's 'voluntary guidelines of the responsible governance of tenure of land, fisheries and forest in the context of National food security' in its land rights and involuntary resettlement standard. The Bank should aim to strengthen the local people's and communities' land and property rights to end extreme poverty, reduce hunger and promote resilient societies. Unfortunately, the customary law on private or community ownership of land and resources is



not recognised in the majority of countries of ADB operation.<sup>5</sup> That creates numerous problems during the implementation of the projects.

The new policy should establish a hierarchy of priorities in such a way that any project Minimises the disruption of the livelihood of people living in the project's area of influence.

- Prioritises the FPIC in rural areas and promotes an equitable transparent public participation process everywhere, ensuring bargaining power for those to be resettled.
- Avoids or minimises the need for physical and economic displacement, ensuring that when people must be displaced, they are treated equitably and involuntary displacement is turned into a development opportunity.
- Considers the need for land-to-land options both in cases of economic as well as physical resettlement.
- Where feasible, ensures locals get a share of the benefits of a project that requires their resettlement (in case of projects as hydropower plants, mining, etc.).
- Prohibits the direct or indirect engagement of the forced evictions and the use of bank funds for displacement operations; the project sponsor should ensure that the displacement is truly a last resort.

The Bank should operationalise the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement and ensure that Bank and borrower practice is consistent with this international law prohibition and best practice among development finance institutions.

The rights of the Indigenous people with regard to land tenure and involuntary resettlement should be specifically described under the Indigenous peoples' standard. Article 10 of the [UN Declaration on the Rights of Indigenous Peoples](#) and article 16 of [the ILO's Convention on Indigenous and Tribal Peoples in Independent Countries](#), prohibits the forcible removal of Indigenous peoples from their territories and lands. No relocation should be done without FPIC and should only be done after just fair compensation, with the option to return turn if feasible.

Therefore, the Bank under its Indigenous peoples' standard should require:

- a) Alternative project designs to avoid the relocation of Indigenous peoples from communally held lands and natural resources subject to traditional ownership or under customary use.
- b) Ensure the avoidance of irreversible impacts on the tangible and intangible cultural heritage of Indigenous peoples/
- c) Proceed with the project only if the resettlement component provides direct benefits to the affected community.
- d) That customary rights are fully recognised and fairly compensated.
- e) That compensation options will include land-based resettlement.
- f) That FPIC is obtained as described above.

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<sup>5</sup> in South East Asia and North and Central Asia there has the highest rate of recognition of customary law however, the vast majority take the form of recognition of a right to culture, preservation the traditions and customs, rather recognition the of land rights, including customary law. <https://portals.iucn.org/library/efiles/documents/2011-101.pdf>



## Mainstreaming biodiversity protection

The updated SPS should ensure the prohibition of environmentally damaging or negatively impacting activities and infrastructure development in all protected areas and environmentally sensitive areas. The Bank should ensure that its environmental protection is based on the ‘no biodiversity loss’ concept.

The only long-term mechanism to protect biodiversity is to define [no-go areas for financing](#), such as critical habitats under local, national and international protection, as well as areas with many endemic species, free-flowing rivers, protected or at-risk marine or coastland ecosystems, pristine forests, Indigenous people’s territories, sacred lands, etc. Critical habitats should include not only habitats of Endangered and Critically Endangered species, but also the habitats of Vulnerable species as defined by the IUCN Red List of Threatened Species or as defined in any national legislation. Vulnerable species are likely to become endangered unless the circumstances that are threatening their survival and reproduction improve.

It was proven that the biodiversity offsetting mechanism and the ‘no net loss’ of biodiversity concept do not effectively support the protection of protected areas and instead undermine the viability of critical ecosystems required not only for the survival of threatened animal and plant species but also, for the livelihoods of local communities. There is no scientific way to prove ‘no net loss’ of biodiversity or ‘no significant net degradation’. Considering that in the majority of countries environmental legislation is weak, ESIA tend to underestimate the direct and cumulative impacts of the activities, while biodiversity offsetting is used for a check box or mere formality exercise<sup>6</sup> by governments to greenwash projects. The Bank should **exclude biodiversity offsetting as a means to address the negative environmental impacts of bank financed activities, because an offset approach may actually intensify and cause more biodiversity loss by creating the illusion of biodiversity protection. There is broad proof of the inherent** flaws in biodiversity offsetting as a concept, and the risks that result in the practice of applying biodiversity offsetting.<sup>7</sup>

It's important that the Bank ensures decision-making based on robust and comprehensive scientific data, regarding the particular impacts of projects/programmes on biodiversity. In the case of a lack of scientific data or when the project promoter cannot prove the absence of future impacts, the project should not be approved.

The Bank should not underestimate interrelations between biodiversity and local communities, indigenous people and vulnerable groups. Until now, in ADB countries of operation people greatly depended on ecosystem services provided by nature for their livelihoods and wellbeing. Empowering traditional stewards to oversee environmental and biodiversity protection is essential, especially for women that interact most with biodiversity – gathering water and medicinal plants, rotating crops, conducting foraging. Therefore, biodiversity protection should clearly address those groups’ needs.

In most of the countries of the ADB’s operation, the weakness of environmental legislation leads to lack of strategic planning, poor spatial planning, negligence of cumulative impacts and not using Strategic

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<sup>6</sup> Like in Georgia, where destruction of river habitats and the disappearing of fish and otter populations is supposed to be offset by planting artificial forests in the Shuakhevi hydro project

<sup>7</sup> <https://foe.org/resources/fools-paradise-how-biodiversity-offsets-dont-stop-biodiversity-loss/>

Environmental Impact tools for country's economy and sector planning. As a result, projects planned this way could bring more devastation than development.

The ADB should ensure that high-risk projects like large hydropower plants, mining and large infrastructure projects, etc. be part of coherent spatial plans and sectoral strategic plans, which have been subject to Strategic Environmental Assessments. The ADB Energy Policy proposes to prepare guidance for Bank staff for numerous areas, including hydropower development. Even recognizing the large dam's impacts on the environment, society and human rights, '[the] ADB will support large hydropower schemes that have been evaluated in a robust environmental and social assessment, including an ecologically led eflow assessment, and after consideration of alternative locations and designs'. However, the energy policy does not require Strategic Impact assessment for those hydropower projects, as required for large dams by the [Netherlands commission on environmental impact assessment](#). In addition, the procedure requires that 'small hydro plants, such as run-of-river plants, will be subject to standard technical and safeguard assessments'. Therefore, the existence of Strategic Environmental Assessments on the level of river basins is the only way to avoid negative cumulative impacts.

## Accountability and remedy under SPS

The ADB SPS 2009 requires from 'the borrower/client [to] establish and maintain a grievance redress mechanism to receive and facilitate resolution of affected peoples' concerns and grievances about the borrower's/client's social and environmental performance at the project level'. The Special Project Facilitator office sets the frame for dealing with grievances.<sup>8</sup> However, it is clear both from practice, as well as from the ADB's own evaluation, that project-related grievance redress mechanisms (GRMs) are often superficial or nonfunctioning. Therefore, the SPS should directly address and set criteria and principles for GRMs, including their function, responsibility and possible remedies under the good practice guidelines.

At this stage, the grievance redress mechanism should be scaled to the risks and impacts of the project and be effective in providing a remedy for harms to people and the environment. It should address affected people's concerns and complaints promptly, using an understandable and transparent process that is gender-responsive, culturally appropriate, and readily accessible to all segments of the affected people.

This approach should be transferred to the ADB's accountability mechanisms and ensure that both of the mechanisms, the Special Project Facilitator (SPF) and the Compliance Review Panel (CRP), have in their mandate the prevention of harm and the provision of an effective remedy for people and the environment, along with institutional accountability and improvement of the Bank's policies and strategies.

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<sup>8</sup> <https://www.adb.org/sites/default/files/publication/29678/grievance-mechanisms-critical-component.pdf>

## Mainstreaming of cultural heritage protection

The ADB lacks strong cultural heritage protection. The SPS 2009 does not even recognise intangible cultural heritage, and it has a limited outlook on tangible cultural heritage. The approach 'ignores the contemporary understandings of heritage which transcend its material elements, and is highly unlikely to suffice to avoid impacts of projects on [intangible cultural heritage] serious'. Unfortunately, we have seen this in a number of ADB projects.

The Bank should make an obligation to respect and protect the culture, both tangible and intangible, of all groups and communities, especially those disadvantaged and marginalised, such as Indigenous peoples, ethnic and tribal groups, vulnerable individuals, etc. Often in numerous places, especially among Indigenous peoples or people living in mountains and forests, the tangible fabric of places and intangible aspects of people's living culture is indivisible and dynamic. Both together represent the continuity of cultural identity and practices (including traditional skills, knowledge, beliefs and/or minority dialects and languages).

The Bank's safeguards evaluation (2020) acknowledges that even the required physical cultural resources safeguards have been infrequently applied by the Bank in its projects.

Therefore, SPS should aim to:

- a) Protect cultural heritage from damage, inappropriate alteration, disruption, removal or misuse and adopt the mitigation hierarchy approach from adverse impacts arising from the project
- b) preserve and safeguard both tangible and intangible cultural heritage
- c) promote the equitable sharing of benefits from the use of cultural heritage based on full consent and ongoing consultation (FPIC, not broad-based support) with concerned populations and their collectively agreed upon representatives
- d) ensure meaningful consultation with stakeholders regarding preservation, protection, utilisation and management of cultural heritage

Multilateral financial institutions that have stronger criteria for the protection of cultural heritage (i.e. the World Bank, EBRD) often fail in its implementation, especially with regard to Intangible Cultural heritage.

The ADB 'no specific guidelines that would list particular risks in the context of infrastructure construction projects, or how it may be shielded from them',<sup>9</sup> as well as not practicing comprehensive consultations to find out risks and remedies for intangible cultural heritage

The new SPS for cultural heritage should be in line with international law and in project activities should be implemented in a manner consistent with UNESCO cultural heritage conventions or any other national or international legal instruments that might have a bearing on the use of cultural heritage. To achieve its

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<sup>9</sup> The Role of Multilateral Development Banks in the Protection of Intangible Cultural Heritage BIICL Working Paper 21 October 2021, British Institute of International and Comparative law

goal, the SPS should ensure assessment of potential direct, indirect, irreversible and cumulative risks to and impacts on cultural heritage from project activities and carry out Heritage Impact Assessments. The detailed procedures in line with the best international standards should be provided for legally protected cultural areas, archaeological sites, built and movable heritage, landscapes and natural features with cultural significance.

Meaningful public participation of concerned parties in case of risks and impacts to their tangible and intangible cultural heritage should be undertaken. The risks and impacts should also include threats of decontextualisation, commodification and misrepresentation along with physical ones; appropriate mitigation and safeguarding plans should be prepared and implemented under the Bank's detailed scrutiny. In cases of irreparable damage or harm of sacred sites, for example, due to the filling of hydropower dam reservoirs, full reparations should be agreed upon by communities prior to the losses incurred.

## Climate mainstreaming

We welcome the Bank's intention to include climate safeguards and respond to the climate crisis. The new SPS should be in line with the provisions of the Paris Agreement, uphold the recommendations of the most recent IPCC Assessment Report and fully incorporate the outcomes of the most recent agreements sealed during COP26.

All the ADB's operations need to be aligned with the objectives of the Paris Agreement, based on the objective to ADB's 2030 sustainability framework.

The ADB should exclude high-carbon and environmentally harmful operations from its portfolio, as well as any activities with direct or indirect financial flows to fossil fuels (coal, oil and gas) in supply chains.

The SPS should create a base for developing a solid framework for the Paris Alignment of all clients, including financial intermediaries. In this case (FI), It should ensure that any public support on corporate level via the ABD, be conditional and define science-based targets and credible, asset level and timebound decarbonization plans aligned with the Paris Agreement. There should be clear guarantees that the ADB's support will contribute to the goal of its client to become Paris-aligned and will only finance projects that support these targets, decarbonization plans developed in consultation with local and regional CSOs, and technologies with proven track records.

The SPS should ensure that the Bank will deliver detailed annual progress reports to the public, describing the ADB's own degree of alignment with the Paris Agreement, and proactively disclose the greenhouse gas emissions linked to all its operations, on a project-by-project basis. Projects must provide data on how they are contributing to gender equality and women's empowerment.